

### **REMARKS/ARGUMENTS**

This Second Supplemental Amendment is submitted in response to the Office Action mailed January 22, 2010. At the time of the Office Action, claims 1, 3-8, 10-24, 37, 39-42, 45-46, 48-50, 52-54, and 56-57 were pending in the application.

Applicant submitted amendments on April 22, 2010 and June 28, 2010. The specification was also amended by the April 22, 2010 Amendment.

The claims were amended by the April 22, 2010 Amendment and the June 28, 2010 Supplemental Amendment. By those amendments, claims 1, 7, 24, and 40 were amended. Claims 37, 39, 41, 42, and 57 were cancelled.

By this paper, claims 1, 7, 10, 15-16 and 24 have been amended. Support for these amendments can be found, for example, in claims 1, 2 and 6 of the originally filed claims. No new matter has been added. Also by this paper, claims 5-6, 12-14, 17, 19-23, 40, 45-46, 48-50, and 52-54 are cancelled. Accordingly, claims 1, 3-4, 7-8, 10-11, 15-16, 18 and 24 are presented for reconsideration by the Examiner.

### **Claim Rejections under 35 U.S.C. § 112**

Claims 5, 12, and 41 were rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Claim 41 has been cancelled. Examiner asserts that the original disclosure does not support an embodiment where the legs of the measurement assembly are coupled at their distal ends and where the legs are flush when the measurement assembly is closed. Applicants respectfully traverse this rejection.

Claim 1 of the originally filed claims recites: "a measurement assembly comprising at least two legs having distal and proximal ends and inward facing and lumen facing surfaces, the legs coupled with each other proximal the distal ends thereof, the measurement assembly also coupled about the distal end of the interior conduit." (emphasis added). In describing the measurement assembly which is coupled about the distal end of the interior conduit, this claim describes an embodiment wherein the legs are coupled together at their distal ends. The legs of the measurement

assembly are an extension of, and part of, the interior conduit. Coupling the interior conduit about its distal end necessarily couples the legs about their distal ends.

Further, claim 2 of the originally filed claims describes the device of claim 1 of the originally filed claims "wherein the inward facing surfaces of the legs are substantially flush with one another when the measurement assembly is closed."

Thus, Applicants respectfully assert that the application (as filed) supports an embodiment wherein the distal ends of the legs are coupled and the legs are flush when the measurement assembly is in a closed position.

### **Claim Rejections under 35 U.S.C. § 103**

#### **Claim 1**

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,919,147 issued to Krishna Jain ("Jain") in view of U.S. Patent No. 5,010,892 issued to Colvin et al. ("Colvin"), U.S. Patent No. 6,712,771 issued to Haddock et al. ("Haddock"), U.S. Patent No. 6,033,359 issued to Yuzuru Doi ("Doi"), and U.S. Patent No. 6,450,997 issued to Rosalyn Baxter-Jones ("Baxter-Jones"). Applicants respectfully traverse this rejection.

Applicants respectfully submit that none of these references teach every limitation in amended claim 1. Further, to the extent these references must be combined to teach the limitations of amended claim 1, the skilled artisan would not be motivated to so combine the references.

#### **Jain**

Jain does not teach a measurement device wherein the legs of the device are coupled at their distal ends and are flush when the measurement device is closed. The only embodiment of Jain wherein the distal ends of the legs are coupled is depicted in Figures 5 and 6 of Jain. As Figure 5 of Jain shows, the legs of that embodiment are not flush when the measurement assembly is in the closed position.

Flush legs allow the measurement device to have a smaller profile, resulting in less trauma to the body during measurement and the ability to access smaller lumens. Thus, flush legs are not merely a design consideration. It is therefore respectfully submitted that claim 1 is patentably distinct over Jain.

Colvin

Colvin does not teach a measurement device wherein the legs of the device are coupled at their distal ends nor a device wherein the legs are flush when the measurement assembly is in the closed position. It therefore respectfully submitted that Colvin, alone or in combination with Jain, does not teach every limitation of claim 1.

Haddock

As Examiner points out, Haddock contains one embodiment (Figures 3A, 3B, and 3C of Haddock) wherein the legs of the measurement assembly are flush when the measurement assembly is in a closed position. However, a skilled artisan would not be led to combine Haddock with Jain as Examiner asserts, because that combination renders Haddock inoperable.

Haddock contains sensors located at the ends of the legs of the device. As the legs of the device expand radially, these sensors also expand and “contact the inner wall of a vessel” wherein the measurement device is disposed. (Col. 7, lines 55-65 of Haddock).

Combining Haddock with Jain such that the distal ends of the legs are coupled together is contrary to the teachings of Haddock. If the legs were so coupled, the sensors at the distal ends of the legs would not expand radially and would therefore not contact the vessel wall. Thus, a skilled artisan would not be led to combine Haddock with Jain.

Haddock teaches an embodiment wherein the sensors are located on legs which are not free (see Figures 2A and 2B of Haddock). As Haddock teaches, this is accomplished by placing the sensors on the exterior conduit of the device. To the extent a skilled artisan were led to alter Haddock such that the legs were coupled at

their distal ends, the skilled artisan would do so as already taught in Haddock, not by combining Haddock and Jain. It is therefore respectfully submitted that claim 1 is patentably distinct from Haddock, alone and in view of the other references.

#### Doi

Doi does not teach a measurement apparatus wherein the legs are coupled at their distal ends and flush when the measurement assembly is in a closed position. It is therefore respectfully submitted that Doi, alone or in combination with any of the cited references, does not teach every limitation of claim 1.

#### Baxter-Jones

The claims have been amended to remove the reference to “detents” in the measuring device. It is therefore respectfully submitted that the prior rejections under Baxter-Jones are moot.

Based on these arguments, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn.

#### Claims 3 and 4

Claims 3 and 4 depend from claim 1, either directly or indirectly, and thus include all the limitations of claim 1. Therefore, for at least the reasons discussed above with respect to claim 1, the combination of Jain in view of Colvin, Haddock, Doi, or Baxter-Jones, as proposed in the Office action, fails to establish a *prima facie* case of obviousness. The Applicant thus respectfully requests that the rejection of claims 3 and 4 under 35 U.S.C. § 103(a) be withdrawn.

#### Claim 7

There is nothing in Jain, Colvin, Haddock, Doi, or Baxter-Jones, whether alone or in combination, that teach the limitations of amended claim 7, similar to the reasons set forth above with respect to independent claim 1. Consequently, the skilled artisan would not be led to predictably modify Jain, Colvin, Haddock, Doi, or Baxter-Jones in

the manner claimed. Therefore, the combination of Jain in view of Colvin, Haddock, Doi, or Baxter-Jones, as proposed in the Office action, fails to establish a *prima facie* case of obviousness. The Applicant thus respectfully requests that the rejection of claim 7 under 35 U.S.C. § 103(a) be withdrawn.

Claims 8, 10-11, 15-16 and 18

Each of claims 8, 10-11, 15-16 and 18 depends from claim 7, either directly or indirectly, and thus includes all the limitations of claim 7. Therefore, for at least the reasons discussed above with respect to claim 7, the combination of Jain in view of Colvin, Haddock, Doi, or Baxter-Jones, as proposed in the Office action, fails to establish a *prima facie* case of obviousness. The Applicant thus respectfully requests that the rejection of claims 8, 10-11, and 14-23 under 35 U.S.C. § 103(a) be withdrawn.

Claim 24

Similar to the reasons set forth above with respect to independent claims 1 and 7, the Applicants respectfully submits that claim 24 is not anticipated by Jain, Colvin, Haddock, Doi, or Baxter-Jones, whether alone or in combination, and thus request that the rejection of this claim under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

Applicants respectfully assert that claims 1, 3-4, 7-8, 10-11, 15-16, 18 and 24 are patentably distinct from the cited references, and requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

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Respectfully submitted,

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